

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

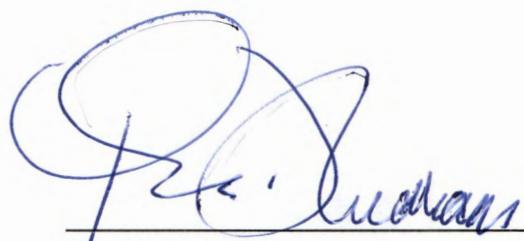
ANDREW NATHANIEL BINGHAM, : Civil No. 3:23-cv-1357
:
Plaintiff : (Judge Mariani)
:
v. :
:
SHAWN HARNER, BERNARD :
WOJCIECHOWSKI, CHRIS GORKI, :
JUSTIN GIBBONS, LIEUTENANT DAVIS, :
:
Defendants :

ORDER

AND NOW, this 6th day of March, 2024, upon consideration of Defendants' motion (Doc. 11) to dismiss, and the parties' respective briefs in support of and in opposition to said motion, and for the reasons set forth in the accompanying Memorandum, **IT IS** **HEREBY ORDERED THAT:**

1. The motion (Doc. 11) is **GRANTED in part** and **DENIED in part**.
2. The motion to dismiss the excessive force claim against Defendants Harner, Wojciechowski, and Gorki is **DENIED**.
3. Defendants Harner, Wojciechowski, and Gorki shall **FILE** an answer in accordance with the Federal Rules of Civil Procedure.
4. The Eighth Amendment failure to intervene claim is **DISMISSED** without prejudice and with leave to amend. On or before March 19, 2024, Plaintiff may file an amendment only with respect to this Eighth Amendment failure to intervene claim against Defendants Davis and Gibbons.

5. Any appeal from this Order is deemed frivolous and not in good faith. See 28 U.S.C. § 1915(a)(3).

A handwritten signature in blue ink, appearing to read "R.D. Mariani".

Robert D. Mariani
United States District Judge